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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-338

COTLER DRUGS, INC., ET AL. and LOUIS PATLOGAN, formerly doing business as PATLOGAN'S WESTERN PHARMACY, *Petitioners,*

v.

CHAS. PFIZER & CO., INC., STATE OF WEST VIRGINIA, ET AL., *Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

## BRIEF IN OPPOSITION FOR CITY, COUNTY AND STATE RESPONDENTS

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## BRIEF IN OPPOSITION FOR CITY, COUNTY AND STATE RESPONDENTS

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### OPINIONS BELOW

The opinion of the District Court for the Southern District of New York is reported at 314 F. Supp. 710. It is reprinted in Appendix I of the Petition, pp. 1-86, and will be cited herein as "Pet. App. I." The unani-

mous decision of the Court of Appeals for the Second Circuit is reported at 440 F. 2d 1079. It is reprinted in Appendix II to the Petition, pp. 1-25, and will be cited herein as "Pet. App. II." Page references will be to the appendices in the Petition.

## JURISDICTION

The court of appeals had jurisdiction under 28 U.S.C. § 1291, the district court having made appropriate determinations under Fed. R. Civ. P. 54(b). See Pet. App. I at 85.[1] The judgment of the court of appeals was entered on March 29, 1971. The petition for a writ of certiorari was filed on June 25, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## QUESTION PRESENTED

Did the Court of Appeals err in affirming, as a proper exercise of judicial discretion, the district court's approval of a class action settlement endorsed by virtually all parties except these petitioners which allocated $12 million to the druggist class to which they belong?

## RULE INVOLVED

Rule 23(e) of the Federal Rules of Civil Procedure provides as follows:

> (e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

[1] Petitioners' statement (Pet. 2) that jurisdiction of the court below was based on 28 U.S.C. § 1292(b) is erroneous.

## STATEMENT

The petition, filed on behalf of some 51 of 55,000 druggists involved in this litigation, asks this Court to upset an overall settlement encompassing 66 private antitrust actions seeking damages for alleged price-fixing and other antitrust violations by five major producers of broad-spectrum antibiotic drugs.[2] The remaining representatives of the druggist class, as well as all other parties, oppose the petition.

Because most of these actions were brought as class actions, the settlement required the approval of the district judge to whom all of the actions had been assigned for pretrial proceedings pursuant to 28 U.S.C. § 1407. Following notices to members of the affected classes and a series of hearings over a period of eighteen months, District Judge Wyatt approved the compromise on September 29, 1970, subject to further administrative proceedings relating to the distribution of the settlement amounts (Pet. App. I). Judgment was entered under Rule 54(b) and, on appeal, the court of appeals affirmed unanimously (Pet. App. II).

The background of these cases, the first of which began in 1964, the events leading up to the compromise, and the factors underlying its approval are set forth in detail in Judge Wyatt's exhaustive opinion (Pet. App. I). Initially, defendants offered a total of $100 million in settlement of all claims for the period 1954-1966

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[2] Chas. Pfizer & Co., Inc.; American Cyanamid Company; Bristol-Myers Company; Olin Mathieson Chemical Corporation (Squibb); and The Upjohn Company. The first three of these companies are defendants in the criminal action before the Court in *United States* v. *Chas. Pfizer & Co., Inc., et al.*, No. 70-72, certiorari granted, May 3, 1971. The pendency of that case, as we show at 18 *infra*, does not affect this one.

brought by or on behalf of (1) cities, counties, states, and other non-federal governmental entities (the "CCS plaintiffs") on account of their direct purchases of drugs and purchases by and for recipients of welfare and other aid, (2) wholesale and retail druggists, and (3) individual consumers.[3] See Pet. App. I at 23-24.

After most of the participants in the litigation (including petitioners, see J.A. 60, 71-72)[4] indicated their acceptance in principle of the $100 million settlement offer, the district court structured the cases so as to facilitate further negotiations and proceedings. In substance, three classes of plaintiffs were established to correspond with the three categories of claims covered by the settlement: the CCS class, the wholesaler-retailer class and the consumer class, with each governmental entity the class representative for its resident consumers (see Pet. App. I at 25-27; J.A. 52-75). Notices approved by the court were mailed to each known claimant in each of the classes; a recognized commercial mailing list was used to distribute the notices to retailers and wholesalers and consumers

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[3] The CCS plaintiffs ultimately included every state, the District of Columbia, Puerto Rico, and a number of cities and counties (see Pet. App. I at 21-23). Seven states and several other governmental entities subsequently elected not to join in the settlement. A number of cases also remained pending separately with respect to claims by the United States, private hospitals, insurance companies, agricultural users and others; these cases and those of the governmental entities not joining in the settlement are not involved here.

[4] The abbreviation "J.A." refers to petitioners' appendix in the court below; "CCS App. refers to the appendix filed in that court by the State of Alabama, et al. Both of these appendices are in the record transmitted to this Court, and we have lodged additional copies with the Clerk for the Court's convenience.

were given notice by publication.[5] These notices described the settlement proposal, advised class members of their right to exclude themselves from the settlement, and directed them to file their claims with the clerk of the court if they wished to participate. Consumers were further advised that if they did not exclude themselves and did not

> "make an individual claim by August 16, 1969, that will constitute an authorization to the Attorney General [or other appropriate chief law officer] to utilize whatever money he may recover as your representative for the benefit of the citizens of your State in such manner as the Court may direct." [CCS App. 27; see Pet. App. I at 27-29.]

In response to the notices, claims were filed in the summer of 1969 by about 38,000 consumers and 4,100 druggists. Forty-two consumers and some 1,500 druggists elected to exclude themselves from the settlement; many of those druggists did so because they believed "that they were not damage[d] and therefore wished to make no claim" (Pet. App. I at 81; see *id.* at 31).

There then followed—as contemplated by the defendants' initial offer—negotiations among representatives of the plaintiff classes (including the wholesaler-retailers) concerning allocation of the settlement

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[5] The consumer notices appeared in quarter-page advertisements in every daily newspaper of general circulation in each state; advertisements in Spanish and Japanese were published in newspapers in those languages (CCS App. 27-29). There were also a number of radio-television announcements, a number of Congressmen sent their constituents additional notice, many attorneys general made public statements announcing the settlement, and, as a news story, the consumer settlement otherwise received widespread publicity in the public media.

amount. Since the plaintiffs could not agree, the defendants specified a plan of allocation in accordance with the rights they had reserved in their offer, electing a modification of the "Alabama Plan" that had been proposed by counsel for thirty states and other governmental entities (Pet. App. I at 40-41). This plan, which is described and discussed in detail in the district court's opinion (especially at Pet. App. I at 32-39 and 49-67), provided—in its ultimate outline—for payments of (1) about $48,200,000 to the governmental claimants on account of their institutional purchases and payments for recipients of welfare and other aid; (2) about $12,000,000 to wholesaler-retailers (see Pet. App. I at 49, 40-41); and (3) about $32,500,000 for consumers, with the remainder after payment of individual claims to be used by each state or other entity for public health purposes to be approved by the court (Pet. App. I at 35-36; see CCS App. 33-35).[6]

A major point of dispute in these negotiations—and the focus of the present petition—was the amount to be allocated to the wholesaler-retailer class. Counsel for that class had submitted a plan seeking $40 million, that is, the entire surplus over the direct governmental claims, which would have left nothing for consumers. All other parties believed that the druggists were entitled to nothing, since they had passed on any overcharges to their customers and indeed—because almost

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[6] The bases for these allocations among the three classes (and the further allocations among the various states and other entities) are described in the district court's opinion. It should be noted that the original figure of $100 million was reduced to take account of the CCS entities which "opted out" of the settlement. There will be some further reductions because of administrative expenses (Pet. App. I at 50).

all used a uniform percentage markup—had actually benefitted (Pet. App. I at 35). The original Alabama Plan allocated $3 million for the druggists' claims. After intensive negotiations, there was agreement (in which nearly all counsel for the druggist class joined) to increase this amount by immediately depositing the whole settlement amount in escrow pending final distribution and assigning the interest over a 13-14 month period to the druggists; thus, the actual amount received by that class would be about $12 million (Pet. App. I at 40-41; Pet. App. II at 8-9, 24).

After appropriate further notice to all parties (see Pet. App. I at 45-49) the district court held a two-day hearing on the proposed compromise and received numerous written submissions and oral statements. The major objection to the plan before the court came from petitioners, who sought an allocation of $40 million at the expense of the consumer classes; the $12 million allocation for druggists was, however, "strongly supported by nearly all the representatives of the wholesaler-retailer class." (Pet. App. I at 67-69, 77.)

After detailed consideration, the district court concluded that the settlement plan agreed upon by the parties was fair, reasonable, and adequate (Pet. App. I at 69-86). The court of appeals agreed with the district court's assessment of the applicable law and found that it had appropriately exercised its discretion in evaluating the settlement. It concluded by "commending" Judge Wyatt "for the skill and diligence which he has demonstrated in conducting this difficult and complex litigation" (Pet. App. II at 25). On June 7, 1971, this Court denied petitioners' application for recall of the mandate.

## ARGUMENT

### I. There Is No Occasion for Further Review, After the Court of Appeals' Unanimous Affirmance, of the District Court's Exercise of Its Discretion in Accordance With Well Settled Standards.

Petitioners urge this Court to decide far-reaching questions concerning the respective rights of wholesalers-retailers and consumers to recover in private treble-damage actions under the antitrust laws. However, as the district court correctly noted, the very purpose of the compromise was to avoid the necessity of litigating questions of fact and law concerning the entitlement of these classes to recover. Thus, the only appellate issues with respect to the terms of the settlement have been whether the district court applied an incorrect standard in assessing the settlement or abused its discretion in giving its approval. There is no reason for further review of the court of appeals' unanimous affirmance on both of these points.

#### A.

The district court was fully conscious of its responsibility "for the protection of the many class members whose interests are involved but who do not appear in the action." Noting that "[a]pproval should be given if the settlement offered is fair, reasonable, and adequate" (Pet. App. I at 69), the court meticulously followed the standards articulated by this Court in *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc.* v. *Anderson*, 390 U.S. 414, 424-425, and countless lower court decisions.[7] This is

[7] See, *e.g.*, *In Re Prudence Co.*, 98 F.2d 559, 560 (2 Cir. 1938); *Connecticut Ry. & Lighting Co.* v. *New York, N.H. & H.R. Co.*, 190 F.2d 305, 308 (2 Cir. 1951); *Daniel Hamm Drayage Co.* v.

not a case like *Cohen* v. *Young,* 127 F. 2d 721 (6 Cir. 1942), to which the petitioners refer, or *Protective Committee,* where orders approving settlements were set aside because the district courts had failed to make independent evaluations of fairness. Thus, there is no genuine issue here as to the legal standards that guided the district court's discretion in approving the settlement.

Nor do petitioners present even a colorable claim that the district court's careful and detailed evaluation of the proposed settlement involved any abuse of discretion.[8] Following the court of appeals' thorough review, further examination of the matter by this Court would not even conceivably be called for in the absence of an unusual degree of error that is not remotely suggested by the petition.

In substance, the petition is based upon the erroneous proposition that the courts below were called upon to litigate the relative merits of the various plaintiffs' claims as if no settlement had been agreed upon at all. But the judicial function in reviewing the adequacy and fairness of a settlement does not contemplate the determination of uncertain legal issues. Such a re-

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*Willson,* 178 F.2d 633, 635, 636 (8 Cir. 1949); *In re California Associated Prod. Co.,* 183 F.2d 946, 950 (9 Cir. 1950); *Norman* v. *McKee,* 431 F.2d 769 (9 Cir. 1970), *cert. denied sub nom. ISI Corp.* v. *Myers,* 401 U.S. 912.

[8] A recent decision of the Judicial Panel on Multidistrict Litigation made the following observation with respect to Judge Wyatt's consideration of this settlement: "We doubt that any other single judge could have done so well. Certainly no one could have been more conscientious, diligent and scrupulously fair to all parties." *In Re Multidistrict Civil Antitrust Actions Involving Antibiotic Drugs,* 320 F.Supp. 586, 588 (J.P.M.L. 1970).

quirement would undermine the public policy which encourages settlements. As stated in *Florida Trailer and Equipment Co.* v. *Deal*, 284 F. 2d 567, 571 (5 Cir. 1960).

> "[Settlements] could hardly be achieved if the test on hearing for approval meant establishing success or failure to a certainty. Parties would be hesitant to explore the likelihood of settlement apprehensive as they would then be that the application for approval would necessarily result in a judicial determination that there was no escape from liability or no hope of recovery and hence no basis for a compromise."

As we shall now show in greater detail, the courts below properly considered and rejected, in the light of this principle, all of the contentions about the merits of the settlement that petitioners seek to present here.

B.

1. Consistent with the settlement standards discussed above, the district court held that the settlement should be disapproved as unfair to druggists only if it could be established that "the damage to [that] class is easily provable and, as a matter of law, cannot be denied by defendants" (Pet. App. I at 79). In fact, the court found the contrary to be more likely, since

> "According to affidavits of experts in the field * * * the overwhelming majority of drug stores in the period 1953-66 charged for prescription drugs a uniform mark-up of 66⅔% over cost. If so, this would mean that any overcharge by defendants in violation of the antitrust laws was passed on to the end use purchaser. The result is that wholesalers and retailers, far from sustaining damages, made substantial profits from any antitrust violations." [Pet. App. I at 79.]

Petitioners object to this finding, which was expressly approved by the court of appeals (Pet. App. II at 17), calling it an "exceptional error of fact" (Pet. 26, 69) based only on a single affidavit (Pet. 19-20). But even by misstating the record,[9] petitioners cannot avoid the settled rule that this Court "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank and Manufacturing Company* v. *Linde Air Products Company,* 336 U.S. 271, 275; *Berenyi* v. *Immigration Director,* 385 U.S. 630, 635.

2. There is no substance to petitioners' contention that *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.,* 392 U.S. 481, would require—if the cases were litigated—that the entire recovery for overcharges resulting from the manufacturers' antitrust violations be

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[9] The district court had before it the affidavit of Dr. William S. Apple, Executive Director of the American Pharmaceutical Association, the national professional society of pharmacists in the United States (J.A. 220-222); the affidavit of William Walker, former president of the National Wholesale Druggists Association (J.A. 223-224); the "Red Books" referred to in Dr. Apple's affidavit which showed the manufacturer's suggested selling price to the consumer as being 66⅔% more than the published price to the druggist (J.A. 221-222); a computer analysis of the 4,100 claim forms filed by wholesaler-retailer claimants (CCS App. 92); and the statement of Mr. Rubenstein, one of petitioners' counsel, who acknowledged that it "has been historically true" that the retailers and wholesalers got back every dollar they paid for the drugs plus their markup (CCS App. 98). In addition, the district court relied on statements from many of the 1,500 druggists "opting out" of the settlement (*e.g.,* J.A. 189-191), who recognized that, far from suffering injury, they profited at the expense of their customers (Pet. App. I at 81), as well as the records on appeal in both the Federal Trade Commission and criminal proceedings (Pet. App. I at 71, 79-80).

given to the wholesaler-retailers (the first purchasers) even though they passed them on to the ultimate consumers and so were not injured. While the district court was not called upon to decide this issue as in a litigated case, both courts below gave thorough consideration to the issue and properly concluded that the opposite was likely, and any recovery by the wholesaler-retailers would be highly improbable as a matter of law. They noted that if this case were tried it would differ from *Hanover* in a number of crucial respects (Pet. App. I at 80-81; Pet. App. II at 13-17). *Inter alia,* the situation here closely resembles the "cost-plus" example given in *Hanover* to indicate the proper application of the "pass-on" principle; moreover, application of that principle here would serve not to free defendants from liability but to channel the recovery to the plaintiff consumers who actually paid the overcharges rather than to the druggists who passed them on and, indeed, profited in the process.

3. The startling and unfounded contention that consumers overcharged because of price-fixing have no right to recover under the antitrust laws (Pet. 28-30, 55)[10] is irrelevant to the fairness of the settlement to

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[10] The proposition ignores 65 years of decisions which have already settled that question to the contrary. See, *e.g., Chattanooga Foundry & Pipe Works* v. *City of Atlanta,* 203 U.S. 390, 396, 399; *Mandeville Island Farms* v. *American Crystal Sugar Co.,* 334 U.S. 219, 236; *Armco Steel Corp.* v. *State of North Dakota,* 376 F.2d 206, 210-211 (8 Cir. 1967).

*Commonwealth Edison Co.* v. *Allis-Chalmers Mfg. Co.,* 315 F.2d 564 (7 Cir. 1963), upon which petitioners rely (Pet. 29), in no way supports their position. In that case, the court of appeals simply held, on the authority of *Keogh* v. *Chicago & N.W. Ry. Co.,* 260 U.S. 156, that consumers had no claim cognizable in an anti-

petitioners or anyone else. The district court found in the exercise of its discretion that the allocation of over $12 million to petitioners' class—an allocation enthusiastically endorsed by the great majority of that class—was more than adequate under all the circumstances. The few dissident members of the wholesaler-retailer class have utterly failed to establish any abuse of discretion in that finding, which the court of appeals has approved. Accordingly, they have no cause for complaint that the defendants also chose to make payments for the benefit of injured consumers.

Similarly, petitioners have no grounds for complaining that the courts below allowed CCS entities to recover as trustees on behalf of those consumers who filed no claims (Pet. 42). Their argument here is based on a misstatement of the lower courts' basis for approving this aspect of the settlement. The states'

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trust action when the impact of a conspiracy on them only "took the shape of allegedly higher rates paid for utility services—rates established as legal by the Illinois Commerce Commission"; thus intervention was denied and consumers were remitted to their remedies before the Commission. 315 F.2d at 567. No such unusual element is present in these cases, and the impact on consumers is direct.

*Mangano* v. *American Radiator & Sanitary Corp.*, 438 F.2d 1187 (3 Cir. 1971), affirming 50 F.R.D. 13 (E.D. Pa. 1970), upon which petitioners also rely (Pet. 29, 42), is likewise inapposite. The courts explained that an individual who buys a house for $20,000 cannot possibly show that his purchase price was affected by a manufacturer's overcharge of $10 on the bathtubs and sinks that went into it (50 F.R.D. at 26). In the present case, by contrast, the consumers bought the drugs in unchanged form and at a fixed mark-up. Thus the "insuperable difficulty" (*Mangano, supra*, 438 F.2d at 1188, quoting *Hanover Shoe*) facing the purchaser of houses in demonstrating injury is not faced by consumers who bought these drugs.

recovery in this case is not founded on a *parens patriae* claim as petitioners repeatedly imply (*e.g.*, Pet. 46-52). See Pet. App. II at 19. The district court expressly disavowed reliance on *parens patriae*[11] and allowed the CCS entities to represent consumers for purposes of settlement under Rule 23 of the Federal Rules of Civil Procedure. It will be time enough to decide in a *litigated* consumer class action case whether a state can recover as trustee on behalf of consumers who do not file individual claims. But this case was settled for the very purpose of avoiding litigation of this question among others; petitioners are in effect asking for an advisory opinion.[12]

Petitioners' assumption that any funds denied consumers or the states as trustees for consumers would redound to the benefit of the wholesaler-retailer class (Pet. 58) has no basis in reality. The terms of the defendants' settlement offer, which petitioners and virtually all others had accepted in principle, permitted the defendants to elect a method of allocation among classes after the plaintiffs had failed to agree among themselves on a common plan (J.A. 73). The allocation so elected was accordingly the only one before the district court for its consideration (*e.g.*, Sept. 15, 1969 tr. p. 37). While the court was called on to approve or disapprove the settlement as a whole, including that allocation, it had no power to direct the defendants to

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[11] CCS App. 10-11, 14.

[12] Moreover, any question as to the administration of payments to consumers and the disposition of any excess consumer funds held in trust by the states as representatives of the consumer class would be premature even if petitioners had standing to raise it, since such matters have been expressly deferred for the district court's future consideration.

settle the cases on a different basis or to "transfer" funds from one class to another (J.A. 73-74). Moreover, the court appropriately observed that "[i]nsistence on [the allocation sought by petitioners] would almost certainly have destroyed any chance of settlement" (Pet. App. I at 78).

**II. Petitioners' Procedural Objections Do Not Warrant Further Review by This Court.**

Petitioners raise a series of objections to the procedure followed by the district court. These contentions were carefully considered by the court of appeals, which not only rejected them but commended the district judge for his handling of this complex proceeding. Petitioners make no showing of error here, much less such grave error that this Court should intervene.

1. Petitioners contend that they were denied a hearing on the damages suffered by their class (Pet. 17-18). This is not true. At the two-day hearing on the fairness of the settlement, petitioners' counsel addressed the court at length on this issue and submitted memoranda and affidavits.

2. Petitioners also insist (Pet. 62) that they were denied a hearing on their conflict of interest charges against certain attorneys. Again, the facts are otherwise, since the court gave them every opportunity to ventilate and explore their charges fully (CCS App. 56-73, 75-87, 92-105). The charges were rejected by the district court, which had lived with the cases for more than eighteen months, and were found "to be clearly without merit" by the court of appeals, which observed (Pet. App. II at 23):

> "Appellants make several rather vague charges of conflict-of-interest as to various counsel for both

> the wholesaler-retailer class and the government plaintiffs. The district court specifically found that 'from the affidavits submitted and [from] the Court's own knowledge of the progress of these negotiations, it is clear that the proposed compromise was the result of good faith bargaining at arm's length.' The appellants have suggested nothing of substance which would cast doubt on this conclusion."

3. Petitioners object that the notice to consumers was defective because it resulted in an assignment of their claims to the state by all consumers who did not file individual claims (Pet. 58-59).[13] But petitioners have no standing to object to this, since monies received by the CCS entities on this basis would not otherwise go to the wholesaler-retailer class (see pp. 13-15, *supra*). In any event, the court of appeals, which carefully considered the point, was satisfied that the notice was proper (Pet. App. II at 22-23).

4. There is no substance to petitioners' objections concerning the notices to the wholesaler-retailer class. Petitioners claim that the original notice to that class was deficient because it did not state that the settlement amount had already been allocated; and, for that reason, they further claim that the class should have been given a second right to "opt out" of the settlement after the allocation was approved. But petitioner's factual premise is untrue; there had been no alloca-

[13] It should be noted that such funds are not state funds, but consumer funds held in trust by the State as class representative for the consumers (Pet. App. I at 36; CCS App. 5; see also *FPC* v. *Interstate Natural Gas Co.*, 336 U.S. 577, 584; *Bebchick* v. *Public Utilities Comm.*, 318 F.2d 187, 203-204 (D.C. Cir. 1963, *en banc*).

tion at the time of the original notice.[14] Accordingly, neither point has any basis. Nor are petitioners correct in contending that the wholesaler-retailer notices were improperly sent only to members of the class who were in business in 1969 (Pet. 63). As the court of appeals said,

> "This contention is without merit since the second notice went beyond the Clark-O'Neil trade list to include anyone whose name was available. In addition, it appears that at a later stage in these proceedings when the district court administers the intra-class distributions, individual claims will again be considered" [Pet. App. II at 24.]

**III. The Pendency in This Court of Hawaii v. Standard Oil Company, No. 70-49, and United States v. Chas. Pfizer & Co., Inc., No. 70-72, Does Not Affect This Case.**

Petitioners seize on the grant of *certiorari* in two other cases in an effort to give substance to their petition: *Hawaii* v. *Standard Oil Company*, No. 70-49, *cert. granted*, 401 U.S. 936; and *United States* v. *Chas. Pfizer & Co., Inc.*, No. 70-72, *cert. granted*, May 3, 1971 (Pet. 52-57). But the ultimate outcome of neither of these cases can affect the correctness of the judgment below.

Petitioners rely on the *Hawaii* case because one of the counts in Hawaii's complaint asserted a claim by the state on behalf of its consumers as *parens patriae*. But the counts below in this case did not proceed on a *parens patriae* theory. Moreover, even petitioners concede that the *parens patriae* issue they seek to raise

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[14] The district court explicitly found that "There was at no time any agreement by counsel for defendants with any counsel for plaintiffs as to what amounts would be allocated to CCS entities, to consumers or to wholesalers and retailers" (CCS App. 21).

here was not raised on appeal by Hawaii—which now pursues only its claim for injury to its economy—and was not decided by the court of appeals in that case (Pet. 53-54).

Nor should the pendency of *United States* v. *Chas. Pfizer & Co.* disturb prompt implementation of this settlement. The ultimate outcome of the criminal litigation might be relevant if there were some question as to the adequacy of the settlement amount as a whole, but that is not disputed. Petitioners accepted the $100 million proposal "as offered" (J.A. 60, 71-72), and no petitioner questioned its fairness either in the district court or in the court of appeals (see Pet. App. I at 68, II at 9). Petitioners' only objection is to their share in the settlement, something that could in no way be affected by the result of the criminal case.

## CONCLUSION

The prolixity of the petition cannot mask the fact that it presents no issue warranting review by this Court. The district court should be allowed to proceed promptly to conclude the administration of the settlement of this protracted litigation.

The petition for a writ of certiorari should be denied.

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